REMARKS

Claims 1-22 are pending in the Application.

Claims 1-22 stand rejected.

Claims 1, 9, and 16 are currently amended.

REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-14 and 16-21 stand rejected under 35 U.S.C. 102(e) as anticipated by *Hendren* (U.S. Patent No. 6,701,415). Applicants respectfully traverse these rejections.

Claim 1 is directed to a data processing system for bulk data transfer. Amended claim 1 reads:

> 1. A data processing system for bulk data transfer comprising:
> a source data processing system for distributing data to one or more target data processing systems wherein after an interruption of distributing said data, distributing said data may be restarted at a checkpoint; and
>
> one or more fan-out nodes for transferring said data between said source system and each of said one or more target data processing systems and transferring result information between said one or more target data processing systems and a preselected set of one or more data processing systems for managing data distributions.

In rejecting claim 1, the Examiner cites to the following text from *Hendren*:

> Methods and systems for handling requests received from a client for information stored on a server. In general, when a request for information is received, cache functions are bypassed or executed based on whether an execution of cache functions in an attempt to access the information from cache is likely to slow processing of a request for the information without at least some compensating reduction in processing time for a request for the information received at a later time. Also described is receiving information that identifies the location of a resource within a domain and selecting a cache based on the information that identifies the location of the resource within the domain. (*Hendren*, Abstract).
> As shown in FIG. 1, a client 100 transmits a request for a resource 104 to a server 102 providing the resource 104. The server then transmits a response that can include the requested resource 104 along with other information such as any errors that may have occurred. Software running

on the client 100 (e.g., a browser) can present the retrieved resource 104 to the user. (*Hendren*, Col. 1, lines 25-31).

The exchange shown in FIG. 1 is a simplification of network communication. In fact, a request typically passes through many intermediate agents before reaching a server 102. One type of intermediate agent is a proxy 120. As shown in FIG. 3, a proxy 120 receives requests from a client 100 and optionally sends them on to the server 102 providing a requested resource. The proxy 120 receives the server's response 108 and can send the response 108 on to the client 100. The proxy 120 can perform many functions in addition to acting as a conduit for client 100/server 102 communication. For example, by examining information stored in requests and/or responses, the proxy 120 can act as a filter, for example, by intercepting mature content before it reaches a client 100 used by a child. (*Hendren*, Col. 1, lines 49-62).

As shown in FIG. 8, a proxy 120 may access multiple cache proxies 124, 138, 140, for example, cache proxies collected within the same ISP 122. This capability enables a single proxy 120 to access a very large number of cached responses. The proxy 120 routes a request received from a client to one of the cache proxies 124, 138, 140 by hashing (e.g., transforming information into a number) the domain 116 included in the URI 108 of the request. For example, hashing a domain of "www.a.com" may yield a "1" while hashing a domain of "www.b.com" may yield a "2." These requests can be sent to cache proxy 124 and 138, respectively. This scheme collects the different resources provided by the same domain into the same cache proxy. For example, "www.a.com/a.html" will share the same domain and reside on the same cache 124.

As described above, a cache proxy 124, 138, 140 may not previously have cached a response corresponding to a particular request. In such a case, the cache proxy 124 transmits the request to the server providing a particular resource. For example, as shown, a request for "www.c.com/c" is routed to cache proxy #2 140 based on the request's URI domain information ("www.c.com"). The cache proxy 140, however, must transmit the request to the server 102 providing the resource since the cache does not yet store "www.c.com/c." Upon receipt of the response, the cache proxy 140 can store "www.c.com/c" in its cache for future use.

To summarize, as shown in FIG. 9, a proxy 120 using multiple cache proxies receives a request 142 and performs 144 a hash function on the domain information included in the URI of the request. Based on the hash results, the proxy 120 transmits 146 the request to one of the cache proxies 124, 138, and 140. (*Hendren*, Col. 1, lines 33-65).

While Examiner cites the above text, the Examiner does not specify which elements in *Hendren* correspond to the various elements of claim 1 or any other claim. (Paper No. 9, page 2). Applicants respectfully remind the Examiner of the requirement that when a "reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable" and "the pertinence of each reference, if not apparent, must be clearly explained." (emphasis added) (37 C.F.R. § 1.104 (c)(2)). Contrary to this requirement, the Examiner does not clearly explain the pertinence of each cited section from *Hendren*. Therefore, as an initial matter, Applicants respectfully assert the Examiner has not established a *prima facie* case that claims 1-14 and 16-21 are anticipated by *Hendren*.

Hendren teaches elements that are different than claim 1. The cited sections disclose a client transmitting requests to a resource-providing server. (Col. 1, lines 25-27). The request may pass through a proxy before reaching a server. (Col. 1, lines 50-52). The proxy may access multiple cache proxies arranged within one ISP. (Col. 2, lines 33-34). The proxy routes the request to one of the cache proxies by hashing. (Col. 2, lines 36-38). If a cache proxy does not have the response in cache, the proxy transmits the request to the server providing the particular resource. (Col. 2, lines 50-51). In turn, the server transmits a response. (Col. 1, lines 27-29). When the proxy receives a response from the server, the cache proxy stores the response and forwards to the user. (Col. 2, lines 57-59). A browser can present the response to the user. (Col. 1, lines 29-31).

Hendren does not disclose all limitations of claim 1. Although the Examiner does not specify which elements of *Hendren* anticipate claim 1's elements, for the sake of argument only, Applicants apply *Hendren* to claim 1 as follows: *Hendren's* "server" might be read as the claimed "source system," *Hendren's* "client" might be read as the claimed "target data processing system," and *Hendren's* "proxy" might be read as the claimed "fan-out nodes." For this interpretation of *Hendren*, claim 1 is not anticipated because *Hendren* does not disclose "after an interruption of distributing said data, distributing said data may be restarted at a checkpoint." Nor does *Hendren* disclose that the proxy caches transfer <u>result information</u> between the client (the target data processing

system) and a "preselected set of one or more data processing systems for managing data distributions."

Under the foregoing interpretation, *Hendren* does not disclose a corresponding element for "result information." To the contrary, the Specification of the current application describes many examples of "result information." For example, the Specification states, "endpoints provide result information to the source system." (Specification, page 14, lines 1-2). Also, the Specification describes the "report-back of successful transfers." (Specification, page 10, lines 1-2). Further, "results reports are generated by repeaters and endpoints reporting status of the transfer of a data distribution" and "results are sent to one or more 'report-to' machines." (Specification, page 23, lines 11-14). *Hendren* does not disclose the transfer of such result information as described or claimed in the present application. Thus, independent claim 1 is allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 2 recites, "The system of Claim 1 wherein each of said one or more fan-out nodes is operable for caching at least a portion of a data distribution and at least a portion of said result information."

Rejecting claim 2, the Examiner cites the same portions of *Hendren* cited for claim 1 with the additional disclosure text:

> The cache proxy 124, 138, 140 receiving 148 the request can determine
> whether to search its cache 150. If the cache proxy searches 160 and finds
> 162 a response corresponding to the request in its cache, the cache proxy
> 124, 138, 140 can return 164 the found response to the proxy 120. If the
> cache proxy decided 150 not to search its cache or failed 162 in its search
> for the request, the cache proxy sends 166 the request on to the server
> identified by the request URI. After the cache proxy receives the response,
> the cache proxy can determine 168 whether to store 170 the response in its
> cache to speed future requests. The cache proxy then returns 172 the
> received response to the proxy 120 for transmission to the client making
> the request. (*Hendren*, Col. 2, line 65-Col. 3, line 11).
>
> Referring to FIG. 11, upon receiving a request, the instructions 176
> for the proxy 174 determine whether to bypass caching functions based on
> the request. If the proxy 174 determines not to use cache functions 125,
> the proxy 174 sends a request to the server 104. Bypassing the caches 124,

138, 140, 141 saves the amount of time needed to search a cache and to store a response in the cache database.
Bypassing the cache proxies 124, 138, 140, 141 also reduces the number of agents that process a request. This eliminates the computational overhead that would otherwise be added by a cache proxy that processes a request. For example, each agent typically parses a received request to extract information. While parsing is conceptually straightforward, parsing can be computationally intensive if a request is large and/or includes variable length data. Hence, eliminating parsing performed by a cache proxy 124, 138, 140, 141 can produce surprisingly large reductions in access times.
Referring to FIG. 12, if the instructions 176 for proxy 174 decide to use cache functions, the proxy 174 sends the request to a cache proxy 124, 138, 140, 141. The proxy 174 selects a cache based at least in part on information 117, 118 (FIG. 2) included in the URI of a request that identifies the location of a resource within a domain. For example, the proxy 174 could select a cache based on the resource location (e.g., "directory/subdirectory/a.html") or the resource location in addition to the URI domain (e.g., "www.domain.com/directory/subdirectory/a.html"). For example, the proxy 174 can implement a hash function that transforms a complete URI into a number. (*Hendren*, Col. 5, line 45-Col. 6, line 8).

These additional sections of *Hendren* cited by the Examiner disclose that upon receiving a request, a proxy may decide to save time by bypassing caching functions. (Col. 5, lines 45-53). However, if cache functions are used, the proxy selects a cache for finding the requested data based on information included in the URI of the request. (Col. 5, line 64-Col. 6, line 2). The proxy can perform a hash function that transforms the URI to a number. (Col. 6, lines 7-10). As compared to claim 1, the Examiner cites these additional sections of *Hendren* to reject claim 2; however, the additional cited sections do not disclose the added limitations of claim 2. Specifically, the cited portions of *Hendren* does not disclose caching any such "result information." Moreover, as discussed in the foregoing with regard to claim 1, *Hendren* does not disclose "result information;" therefore, *Hendren* necessarily does not disclose caching such result information. Therefore, *Hendren* does not disclose every limitation of claim 2 and claim 2 is allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 3 recites, "The system of Claim 1 wherein a data distribution has a preselected priority, said preselected priority operable for determining an availability of

resources for said transferring of said data and said transferring of said result information." For claim 3, the Examiner cites the same portions of *Hendren* cited in rejecting claim 2. *Hendren* does not disclose a data distribution with a "preselected priority." The cited references of *Hendren* make no mention of any priority. Further, claim 3 depends from claim 1 and therefore recites every limitation of claim 1. As discussed in the foregoing discussion of claim 1, the cited portions of *Hendren* do not disclose "transferring result information." Therefore, *Hendren* does not disclose every limitation of claim 3. Thus, dependent claim 3 is allowable under 35 U.S.C. § 102 over *Hendren*.

Claims 4-5 depend from claim 1 and therefore recite every limitation of claim 1. For at least the reasons discussed in the foregoing regarding claim 1, *Hendren* does not disclose every limitation of claims 4-5. Thus, dependent claims 4-5 are allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 6 depends from dependent claim 5 and therefore recites every limitation of claims 1 and 5. Additionally, claim 6 recites "The system of Claim 5 wherein a preselected one of said one or more data processing systems for managing data distributions enqueues said request in a database." The Examiner ignores the additional limitations of claim 6 and rejects claim 6 under the same rationale as the rejection of claim 2. (Paper No. 9, page 4). *Hendren* does not recite every limitation of claim 6. The Examiner has not established a *prima facie* case that claim 6 is anticipated by *Hendren*. *Hendren* does not disclose the additional limitations of claim 6 "managing data distributions enqueues the request in a database." Also, for at least the reasons discussed in the foregoing regarding claim 1, dependent claim 6 is allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 7 depends from dependent claim 6 and therefore recites every limitation of claims 1, 5, and 6. Additionally, claim 7 recites:

> 7. The system of Claim 6 wherein said request comprises:
> a list of target data processing systems to receive the data;
> an identifier of a method by which the target machines will receive
> and process the data; and

an identifier of a notification method by which said result information from each endpoint system will be received by said preselected set of one or more data processing systems for managing data distributions.

As discussed above with regard to claims 1, 5 and 6, *Hendren* does not recite every limitation of claims 1, 5, or 6. For at least these reasons, claim 7 is allowable over *Hendren*. However, *Hendren* is further distinguishable because *Hendren* does not disclose the additional limitations of claim 7. In rejecting claim 7, the Examiner cites the same sections of *Hendren* relied on for rejecting claim 2. *Hendren* describes a request as including a URI identifier that identifies a requested resource. (Col. 1, lines 32-42). The request can also include "other information" such as the type of client making the request (e.g. web browser), and the preferred language of a user. (Col. 1, lines 44-48). *Hendren* does not disclose that the request has "an identifier of notification method by which result information will be received." Regardless, as discussed with regard to claim 1, the Examiner has not identified and Applicants have not found any disclosure in *Hendren* corresponding to "result information." For at least the foregoing reasons, *Hendren* does not anticipate claim 7. Thus, dependent claim 7 is allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 8 depends from dependent claim 6 and therefore recites the limitations of claims 1, 5 and 6. Additionally, claim 8 recites, "The system of Claim 6 wherein said request is assigned a preselected distribution priority and said request is enqueued in accordance with said preselected distribution priority." As an initial matter, claim 8 is patentable over *Hendren* for at least the reasons discussed in the foregoing with respect to claims 1 and 6. Also, *Hendren* does not disclose the additional limitations of claim 8 that a request is assigned a distribution priority or that a request is enqueued. For at least the foregoing reasons, *Hendren* does not anticipate claim 8. Thus, dependent claim 8 is allowable under 35 U.S.C. § 102 over *Hendren*.

The Examiner rejects independent claim 9 as anticipated by *Hendren*. Amended claim 9 reads:

9. A method for distributing data comprising the steps of:

transferring said data via a first set of one or more fan-out nodes to one or more endpoint systems wherein after an interruption of said data, distributing said data may be restarted at a checkpoint; and

transferring results information via a second set of said one or more fan-out nodes from said one or more endpoint systems to a preselected set of one or more data processing systems for managing data distributions, said results information generated in response to said step of transferring said data.

The Examiner rejects claim 9 as anticipated by the same teachings relied on for claim 2. Generally, the teachings disclose a proxy receiving a request and deciding whether to search its cache for the requested data. (Paper. No. 9, page 3 (citing Col. 2, line 65 through Col. 3, line 11)). The proxy sends a request to a server and decides whether to store the response in cache for future requests. (Col. 3, lines 5-9). Bypassing caches saves the amount of time needed to search a cache and to store a response in the cache database. (Col. 5, lines 50-53). If the instructions for the proxy decide to use cache functions, the proxy selects a cache based on information included in a request's URI. (Col. 5, lines 64 through Col. 6, lines 3).

Hendren does not disclose every limitation of claim 9. As discussed in the foregoing with respect to claim 1, *Hendren* does not disclose "transferring results information." *Hendren* does not disclose both a "first set of one or more fan-out nodes" and a "second set of said one or more fan-out nodes." Further, *Hendren* does not disclose "said results information generated in response to said step of transferring said data." *Hendren* does not disclose "wherein after an interruption of transferring said data, transferring said data may be restarted at a checkpoint." The Examiner erroneously relies on portions of *Hendren* that do not disclose every element of claim 9. Thus, claim 9 is allowable over *Hendren* under 35 U.S.C. § 102.

Claims 10-11 depend from independent claim 9 and therefore recite every limitation of claim 9. For at least the reasons discussed in the foregoing regarding claim 9, *Hendren* does not disclose every limitation of claims 10-11. Thus, dependent claims 10-11 are allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 12 depends from dependent claim 11 and therefore recites the limitations of claim 11 and independent claim 9. The Examiner rejects claim 12 for the same reasons

as claim 7. Therefore, claim 12 is allowable over *Hendren* for at least the reasons discussed in the foregoing with regard to claims 7 and 9.

Claim 13 depends from dependent claim 10 and therefore recites the limitations of claim 10 and independent claim 9. Claim 13 recites,

> 13. The method of Claim 10 further comprising the steps of:
> assigning one of a preselected set of priority values to each data distribution; and
> determining an availability of a network connection for said step of transferring said data in response to said one of said preselected set of priority values.

As an initial matter, claim 13 is allowable for at least the reasons discussed in the foregoing with respect to independent claim 9. Further, *Hendren* does not disclose the additional limitations of claim 13. Specifically, nowhere in the cited portions does *Hendren* disclose assigning priority values or determining the availability of a network connection. Thus, dependent claim 13 is allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 14 depends from independent claim 9 and therefore recites the limitations of claim 9. For at least the reasons discussed above in regard to claim 9, *Hendren* does not anticipate claim 14. Additionally, claim 14 recites, "The method of Claim 11 further comprising the step of determining an availability of a network connection for said transferring of results information in response to said one of said preselected set of priority values." Nowhere does *Hendren* disclose determining an availability of a network connection, transferring results information, or a preselected set of priority values. Thus, dependent claim 14 is allowable under 35 U.S.C. § 102 over *Hendren*.

The Examiner rejects claim 16 for the same reasons as claim 9. (Paper No. 9, page 3). Amended claim 16 reads:

> 16. A computer program product embodied in a machine readable storage medium, the program product including programming for distributing data comprising instructions for:
> transferring said data via a first set of one or more fan-out nodes to one or more endpoint systems wherein after an interruption of transferring said data, transferring said data may be restarted at a checkpoint; and
>
> transferring results information via a second set of said one or more fan-out nodes from said one or more endpoint systems to a

preselected set of one or more data processing systems for managing data distributions, said results information generated in response to said step of transferring said data.

The elements of claim 16 parallel the method steps of claim 9. For at least the reasons discussed in conjunction with claim 9, claim 16 is not anticipated by *Hendren*. Thus, claim 16 is allowable under 35 U.S.C. § 102 over *Hendren*.

Claims 17-18 depend from independent claim 16 and therefore recite every limitation of claim 16. For at least the reasons discussed in the foregoing regarding claim 16, *Hendren* does not disclose every limitation of claims 17-18. Thus, dependent claims 17-18 are allowable under 35 U.S.C. § 102 over *Hendren*.

Claim 19 depends from dependent claim 18 and therefore recites the limitations of claim 18 and independent claim 16. Also, the Examiner rejects claim 19 for the same reasons as claim 7. (Paper No. 9, page 4). Claim 19 is allowable over *Hendren* for at least the reasons discussed in the foregoing with regard to claims 7 and 16.

Claim 20 depends from dependent claim 17 and therefore recites the limitations of claim 17 and independent claim 16. Also, the Examiner rejects claim 20 for the same reasons as claim 13. (Paper No. 9, page 5). Claim 20 is allowable over *Hendren* for at least the reasons discussed in the foregoing with regard to claims 13 and 16.

Claim 21 depends from dependent claim 18 and therefore recites the limitations of claim 18 and independent claim 16. Also, the Examiner rejects claim 21 under the same rationale as the rejection of claim 14. For at least the reasons discussed above in regard to claims 14 and 16, *Hendren* does not anticipate claim 21. Thus, dependent claim 21 is allowable under 35 U.S.C. § 102 over *Hendren*.

REJECTIONS UNDER 35 U.S.C. § 103

Claims 15 and 22 stand rejected as obvious under 35 U.S.C. § 103 over *Hendren* in view of *Smith* (U.S. Patent No. 6,341,311). (Paper No. 9, page 6). Applicants respectfully traverse these rejections.

The basic test for nonobvious subject matter is whether the differences between the subject matter and the prior art are such that the claimed subject matter as a whole would not have been obvious to a person having ordinary skill in the art to which the subject matter pertains. The United States Supreme Court in *Graham v. John Deere & Co.*, 383 U.S. 1 (1966) set forth the factual inquiries which must be considered in applying the statutory test: (1) a determination of the scope and contents of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; and (3) resolving the level of ordinary skill in the pertinent art.

Determining Scope and Content of Prior Art

In determining the scope and content of the prior art, the Examiner must first consider the nature of the problem on which the inventor was working. Once this has been established, the Examiner must select, for purposes of comparing and contrasting with the claims at issue, prior art references which are reasonably pertinent to that problem (the inventor's field of endeavor). *See Heidelberger Druckmaschinen AG v. Hantscho Commercial Products, Inc.*, 30 U.S.P.Q.2d 1377, 1379 (Fed. Cir. 1994). In selecting references, hindsight must be avoided at all costs.

The subject matter of claims 15 and 22 relates to a method and computer program for distributing data including transferring data via a first set of fan-out nodes to endpoint systems and transferring result information, which is generated in response to transferring the data, via a second set of the fan-out nodes from the endpoint systems to a preselected set of systems for managing data distributions. The fan-out nodes are operable for caching at least a portion of a data distribution and at least a portion of the result information. The method and computer program further include assigning one of a preselected set of priority values to each data distribution and determining availability of a network connection for transferring the data in response to one of the preselected set of priority values. Still further, the method and computer program relate to assigning a distribution lifetime value to each data distribution and aborting the transferring of data in response to the unavailability of the connection for a time interval corresponding to the distribution lifetime.

As discussed in the foregoing, *Hendren* relates to a system that uses a proxy with proxy caches to lessen the burden on servers and lessen Internet traffic. Recently used data requests can be stored in a proxy cache of and ISP for future requests by clients. Also, to save any time penalty associated with a cache miss, the proxy instructions may bypass a cache search and send a request directly to a server.

Smith relates to an array of multiple proxy servers configured together to act as a single distributed cache of information identified through URL's. (Col. 1, lines 9-12). Each proxy server in the array has an array membership list. (Fig. 5). Hashing algorithms can be used to deterministically categorize both the array members and the URL itself. (Col. 12, lines 19-20). *Smith* states as a goal storing a URL data object in only one location in the array to maximize cache capacity. (Col. 4, lines 7-10).

The section of *Smith* relied on by the Examiner in rejecting claims 15 and 22 discloses a "time-to-live ('TTL') timer" that triggers the updating of array membership lists. (Col. 18, lines 13-15). A purpose of the TTL is to allow for the effective propagation of array membership information among array members. (Col. 18, lines 34-35).

When the TTL timer expires, a proxy array member is chosen randomly, and the array membership list for that proxy array member is received. (Col. 18, lines 18-22). The TTL timer is reset to allow the process to repeat itself. (Col. 18, lines 30-32). The TTL timer is also used to manage requests of temporarily unavailable array members. (Col. 18, lines 43-45). Specifically, if an array member is temporarily unavailable, no future accesses are made to that array member at least until the TTL timer resets. (*Id.*).

Differences Between Prior Art and Claims

The second step within the test described in *Graham* is to ascertain the differences between the cited prior art and the claims at issue. A *prima facie* showing of obviousness requires the Examiner to establish that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention. The showings must be clear and particular. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999).

The cited disclosures of *Hendren* and *Smith* differ from the subject matter of claim 15. *Hendren* and *Smith* both relate to proxy servers. *Smith* relates to an array of proxy servers designed to limit duplication among proxy server array members. The subject matter of claim 15 is distinguishable over the cited portions of *Smith*. Instead of assigning a distribution lifetime value to each data distribution, *Smith* sets a timer used in triggering the updating of proxy server array membership lists. Rather than determining the availability of a network connection and aborting the step of transferring data in response, *Smith* discloses not accessing a arrayed proxy server if unavailable during a TTL cycle.

In addition to the differences between the prior references and the claims, not all limitations of the claims are found in the cited references. As discussed in the foregoing with regard to 35 U.S.C. § 102 rejections of claims 9-10 and 13, *Hendren* does not disclose "transferring results information." *Hendren* does not disclose both a "first set of one or more fan-out nodes" and a "second set of said one or more fan-out nodes." *Hendren* does not disclose assigning priority values or determining the availability of a network connection. Claim 15 relies on claim 13 and therefore recites the limitation of claim 13. Therefore, for at least the reasons discussed in the foregoing with regard to claim 13, a combination of *Hendren* and *Smith* does not disclose all of the limitations of claim 15.

Further *Smith* does not disclose the limitations of claim 15 for assigning a distribution lifetime value to each data distribution and aborting the step of transferring data in response to the unavailability of the connection. The Examiner states that *Smith* recites these limitations "at least implicitly." (Paper No. 9, page 6). The Examiner has not established a *prima facie* case that *Smith* recites the added limitations of claim 15. *Smith* and *Hendren*, taken alone or in combination, do not recite every limitation of claim 15. Therefore, claim 15 is allowable over *Hendren* in view *Smith* under 35 U.S.C. § 103.

Claim 22 recites computer program product limitations which are parallel to the method steps of claim 15. The Examiner rejects claim 22 under the same rationale as

claim 15. (Paper No. 9, page 6). For at least the reasons discussed with respect to claim 15, claim 22 is allowable over *Hendren* in view of *Smith*.

Ordinary Skill and Relevant Art

In resolving the level of ordinary skill of the pertinent art, as required by the third step in *Graham*, the Examiner must step backward in time and into the shoes worn by a person of ordinary skill when the invention was unknown and just before it was made. The hypothetical person skilled in the art can summarily be described as one who thinks along lines of conventional wisdom in the art and neither one who undertakes to innovate nor one who has the benefit of hindsight. Thus, neither an examiner, nor a judge, nor a genius in the art at hand, nor even the inventor is such a person skilled in the art.

In order to establish a *prima facie* case of obviousness, it is necessary for the Examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art, or in the form of generally available knowledge that one having ordinary skill in the art would have been led to modify or combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300, 1301 (Bd. Pat. App. & Int. 1993); *Ashland Oil, Inc. v. Delta Resins and Refractories, Inc.*, 776 F.2d 281 (Fed. Cir. 1985). The motivation or suggestion to modify or combine references must come from one of three possible sources: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). The showings must be clear and particular. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teachings of multiple references, standing alone, are not evidence. *Id.*

The Examiner has not established a *prima facie* case of obviousness because the Examiner has not cited sufficient motivation to combine *Hendren* and *Smith*. The Examiner states as motivation: "Given the teaching of Smith, it would have been obvious to one of ordinary skill in the art to modify Hendren, III to implement or incorporate a time-to-live (TTL) timer to expire at [a] certain time in order to provide information from a proxy to a client in a timely manner." These are the Examiner's subjective opinions,

unsupported by any facts or objective evidence. Further, even if Examiner's statements are taken as true, the statements do not establish that one of ordinary skill in the art would be motivated to modify *Hendren* with the teaching of *Smith* to practice the invention of claims 15 or 22. Providing "information from a proxy to a client in a timely manner" is not among the recitations of claim 15 and 22. Therefore, the Examiner's motivation to combine is inadequate.

The legal conclusion of obviousness must have a correct factual basis. *See Graham v. John Deere & Co.*, 383 U.S. 1 (1966); *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998). Where the legal conclusion is not supported by facts, it cannot stand. *Id.* A rejection based on § 103 clearly must rest on a factual basis, and these facts must be interpreted without hindsight reconstruction of the invention from the prior art. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The patentability of an invention is not to be viewed with hindsight or "viewed after the event." *Goodyear Company v. Ray O Vac Company*, 321 U.S. 275, 279 (1944). The proper inquiry is whether modifying or bringing them together was obvious and not, whether one of ordinary skill, having the invention before him, would find it obvious through hindsight to construct the invention. Accordingly, an Examiner cannot establish obviousness by locating references which describe various aspects of the patent Applicant's invention without also providing evidence of the motivating force which would compel one skilled in the art to do what the patent applicant has done.

The Examiner's rejection of claims 15 and 22 does not rest on a factual basis. Instead, the Examiner has attempted hindsight reconstruction of the invention by picking elements from *Hendren* and *Smith*. Claims 15 and 22 recite "assigning a distribution life<u>time</u> value" and aborting transferring for a "<u>time</u> interval" (emphasis added). For these elements, the Examiner cites a portion of *Smith* disclosing a <u>timer</u>, but the context in which *Smith* uses the timer is different than a timer that might be used in conjunction with the subject matter of claims 15 and 22. Therefore, the rejections of claims 15 and 22 over *Hendren* in view of *Smith* are improper.

The references, alone or in combination, do not recite every limitation of claim 15 or 22. The Examiner has not established a *prima facie* case of obviousness. Therefore, claims 15 and 22 are allowable over *Hendren* in view of *Smith*.
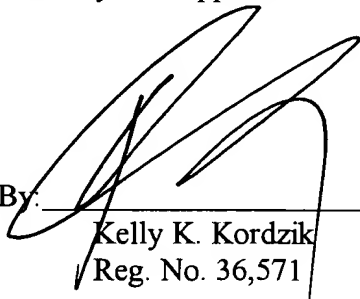
CONCLUSION

Hendren does not disclose every limitation of any of claims 1-14 or 16-21. *Hendren* and *Smith*, taken alone or in combination, do not disclose every limitation of claims 15 or 22. There is no motivation to combine or modify *Hendren* and *Smith* to practice claims 15 or 22. The Examiner fails to establish a *prima facie* case that any claim is unpatentable over the cited references.

In consideration of the foregoing, all remaining claims are in condition for allowance. Applicants respectfully request an early allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below-listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

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